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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/069,480	02/27/2002	Kazuyuki Miya	L9289.02130	3434
24257	7590	05/24/2007		
STEVENS DAVIS MILLER & MOSHER, LLP			EXAMINER	
1615 L STREET, NW			ISMAIL, SHAWKI SAIF	
SUITE 850				
WASHINGTON, DC 20036			ART UNIT	PAPER NUMBER
			2155	
			MAIL DATE	DELIVERY MODE
			05/24/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/069,480	<b>Applicant(s)</b> MIYA ET AL.	
	<b>Examiner</b> Shawki S. Ismail	<b>Art Unit</b> 2155	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 15 March 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 26-37 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 26-37 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **RESPONSE TO AMENDMENT**

1. This communication is responsive to the amendment received on January 23, 2007.

Claims 26, 31-32, and 34 have amended.

Claims 26-37 are pending examination.

### **Continued Examination Under 37 CFR 1.114 1.**

2. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on March 15, 2007 has been entered.

### **The New Grounds of Rejection**

3. Applicant's amendment and arguments received on January 23, 2007 have been fully considered, however they are deemed to be moot in view of the new grounds of rejection.

### **Claim Rejections - 35 USC § 103**

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 26-27, 30-35 and 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Neumiller et al.**, (Neumiller) U.S. Patent No. **6,226,283** in view of **Mohebbi** U.S. Patent **6,889,046**.

6. As to claim 26, Neumiller teaches a fast packet transmission system comprising:  
a plurality of base stations that each store an identical sequence of informational packets to be communicated (see Fig. 1, col. 3, lines 29-36); and  
a communication terminal that selects one of the base stations and communicates to the selected base station a packet identifier identifying a next packet within the sequence of packets to be communicated by the selected base station (see Fig. 1, col. 4, lines 21-34), wherein:

only the selected base station communicates to the communication terminal the packet identified by the communicated packet identifier (col. 9, lines 45-60).

Neumiller does not explicitly teach wherein the selection is based on channel states between the bases stations and the communication terminal.

Mohebbi teaches In a cellular mobile communications network a mobile station is capable of receiving a downlink signal from each of a plurality of base stations and transmitting an uplink signal to the plurality of the base stations through a wireless channel. The mobile station produces a measure of signal quality of the downlink

signals from the plurality of base stations to the mobile station and selects a base station from which the downlink signal shows a preferred signal quality. The mobile station transmits an uplink signal indicating the selected base station among the plurality of base stations for subsequent communications with the mobile station. Each base station processes the uplink signal to identify the selected base station from among the plurality of base stations (see abstract).

It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to incorporate the teaching of mohebbi into the invention of Neumiller in order to allow the selection to be based on channel states between the bases stations and the communication terminal.

7. As to claim 27, Neumiller teach the system of claim 26, wherein the communication terminal communicates the packet identifier identifying the next packet to be communicated only when the communication terminal selects a different base station to communicate the next packet than was used to communicate the most recently received packet of the sequence of packets (see Fig. 1, col. 4, lines 21-34).

8. As to claim 30, Neumiller teach the system of claim 26, wherein the communication terminal applies greater transmission power to the transmission of the packet identifier than to the transmission of information that is not communicated with the packet identifier (see Fig. 1, col. 4, lines 21-34).

9. Claims 31-37 do not teach or define any new limitation above claims 26-30; therefore they are rejected for similar reasons.

10. Claim 28, 29 and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Neumiller et al.**, (Neumiller) U.S. Patent No. **6,226,283** in view of **Mohebbi** U.S. Patent **6,889,046** and further in view of **Parkvall et al.**, (Jones) U.S. Patent No. **6,542,736**.

11. As to claims 28, 29 and 36, Neumiller teach the system as described above. Neumiller does not explicitly teach wherein the communication terminal identifies, in the communication identifying the next packet to be communicated, the type of modulation the selected base station is to use in communicating the next packet.

Parkvall teaches data communications in a radio communications system, and more specifically, to adaptation of a radio link to a mobile terminal based on current radio communication conditions. Link adaptation may be accomplished by changing the transmit power of the base station, e.g., increasing the transmit power level for data transmitted to mobile terminals with a bad channel quality. Link adaptation may also be accomplished by changing the type of modulation and amount of channel coding applied to the data to be transmitted by the base station (see abstract, col. 2, lines 37-56).

It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to incorporate the teaching of Parkvall into the invention of Neumiller and Mohebbi in order to be able attain better channel quality and to maximize the data transmission rate.

12. Examiner has cited particular columns and line numbers in the references as applied to the claims above for the convenience of the applicant. Although the specified citations are representative of the teachings of the art and are applied to the specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested from the applicant in preparing responses, to fully consider the references in its entirety as potentially teaching of all or part of the claimed invention, as well as the context.

### **Response to Arguments**

13. Applicant's amendment and arguments received on January 23, 2007 have been fully considered but they are deemed to be moot in view of the new ground(s) of rejection.

### **Contact Information**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shawki S Ismail whose telephone number is 571-272-3985. The examiner can normally be reached on M-F 8:30 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Saleh Najjar can be reached on 571-272-4006. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for

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published applications may be obtained from either Private PAIR or Public PAIR.

Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should

you have questions on access to the Private PAIR system, contact the Electronic

Business Center (EBC) at 866-217-9197 (toll-free).

Shawki Ismail  
Patent Examiner  
May 21, 2007



SALEH NAJJAR  
SUPERVISORY PATENT EXAMINER